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7

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No.

2011-991

11 **KATHERINE ANN CAPDEVILLE, AKA**
12 **KATHERINE ANN GAURA**
13 **1327 Oliver Street**
Santa Barbara, CA 93101
14 **Registered Nurse License No. 306060**

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about September 30, 1979, the Board issued Registered Nurse License Number
23 306060 to Katherine Ann Capdeville, aka Katherine Ann Gaura (Respondent). The Registered
24 Nurse License was in full force and effect at all times relevant to the charges brought herein and
25 will expire on June 30, 2011, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions."

7. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

1
2 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
3 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
4 section."

5 **REGULATORY PROVISION**

6 8. California Code of Regulations, title 16, section 1442, states:

7 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
8 the standard of care which, under similar circumstances, would have ordinarily been exercised by
9 a competent registered nurse. Such an extreme departure means the repeated failure to provide
10 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
11 situation which the nurse knew, or should have known, could have jeopardized the client's health
12 or life."

13 **COST RECOVERY PROVISION**

14 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 **DRUG DEFINITION**

19 10. **Morphine/Morphine Sulphate** – a Schedule II controlled substance pursuant to
20 Health and Safety Code section 11055, and a dangerous drug pursuant to Business and
21 Professions Code section 4022. It is a narcotic analgesic used for the relief of severe pain.

22 **SANTA BARBARA COTTAGE HOSPITAL**

23 11. In 2007, Respondent was employed as a registered nurse at Santa Barbara Cottage
24 Hospital. In or about March 2007, hospital personnel discovered multiple instances of
25 discrepancy in narcotic administration and documentation involving Respondent between about
26 February 11, 2007 to about March 6, 2007. Upon investigation of the medical records of
27 Respondent's eight (8) patients, with Identification Numbers 3702939, 3707302, 3706184,
28 3709517, 3711653, 3713879, 3713915 and 3714215, it was discovered that Respondent withdrew

1 excessive amounts of Morphine/Morphine Sulphate for these patients during this period of time,
2 but failed to waste or document wastage, and failed to document administration.

3 12. On or about March 14, 2011, upon being interviewed by the Board's investigator
4 about the narcotic irregularities, Respondent admitted to the Board's investigator that she diverted
5 Morphine from her patients for her own use "as often as [she] could" while working at Santa
6 Barbara Cottage Hospital. She stated to the investigator that while working at Santa Barbara
7 Cottage Hospital, upon arrival for her shift, "The first thing I would do is check my patients'
8 charts to see who had an order for Morphine. If a patient did not have an order, I would get it
9 ordered, so I could take it." She further admitted that she would self-administer Morphine during
10 her shift by injecting herself with the narcotic.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct: Gross Negligence)**

13 13. Respondent is subject to disciplinary action under Code section 2761, subdivision
14 (a)(1), in conjunction with California Code of Regulations, title 16, section 1442, on the grounds
15 of unprofessional conduct, in that between about February 11, 2007 to about March 6, 2007,
16 while employed as a registered nurse at Santa Barbara Cottage Hospital, Respondent committed
17 gross negligence by withdrawing Morphine/Morphine Sulphate for eight (8) patients, and failing
18 to properly obtain physician's order, document, waste and/or administer the drugs to the patients.
19 Respondent admitted that she diverted Morphine/Morphine Sulphate from her patients as often as
20 she could, and self-injected the narcotic during her shift. Complainant refers to and incorporates
21 all the allegations contained in paragraphs 11 -12, as though set forth fully.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct: Illegally Obtained or Possessed Controlled Substances)**

24 14. Respondent is subject to disciplinary action under Code section 2762, subdivision (a),
25 for unprofessional conduct, in that between about February 11, 2007 to about March 6, 2007,
26 while employed as a registered nurse at Santa Barbara Cottage Hospital, Respondent unlawfully
27 obtained or possessed Morphine/Morphine Sulphate, a controlled substance and dangerous drug,
28 by using the data of eight (8) patients, and failing to properly document, waste or administer the

1 drugs to the patients. Respondent admitted that she diverted Morphine/Morphine Sulphate from
2 her patients as often as she could, and self-injected the narcotic during her shift. Complainant
3 refers to and incorporates all the allegations contained in paragraphs 11 -12, as though set forth
4 fully.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct: Dangerous Use of Drugs)**

7 15. Respondent is subject to disciplinary action under Code section 2762, subdivision (b),
8 for unprofessional conduct, in that between about February 11, 2007 to about March 6, 2007,
9 while employed as a registered nurse at Santa Barbara Cottage Hospital, Respondent used
10 Morphine/Morphine Sulphate to an extent or in a manner dangerous or injurious to herself, or any
11 other person, or to the extent that such use impaired her ability to conduct with safety to the
12 public the practice authorized by her license. Respondent admitted that she diverted
13 Morphine/Morphine Sulphate from her patients as often as she could, and self-injected the
14 narcotic during her shift. Complainant refers to and incorporates all the allegations contained in
15 paragraphs 11 - 12, as though set forth fully.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct: Made Grossly Incorrect/Inconsistent Entries)**

18 16. Respondent is subject to disciplinary action under Code section 2762, subdivision (e),
19 for unprofessional conduct, in that between about February 11, 2007 to about March 6, 2007,
20 while employed as a registered nurse at Santa Barbara Cottage Hospital, Respondent made
21 grossly incorrect or grossly inconsistent in the medical records of eight (8) patients pertaining to
22 Morphine/Morphine Sulphate. Respondent withdrew Morphine/Morphine Sulphate by using the
23 data of eight (8) patients, but failed to properly document, waste or administer the drugs to the
24 patients. Respondent admitted that she diverted Morphine/Morphine Sulphate from her patients
25 as often as she could, and self-injected the narcotic during her shift. Complainant refers to and
26 incorporates all the allegations contained in paragraphs 11 - 12, as though set forth fully.

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1 FACTOR IN AGGRAVATION

2 17. To determine the degree of discipline to be imposed, if any, Complainant further
3 alleges the following:

4 18. In or about 2007, Respondent enrolled in the Board's Diversion Program and was
5 terminated for non-compliance on or about December 4, 2009.

6 PRAYER

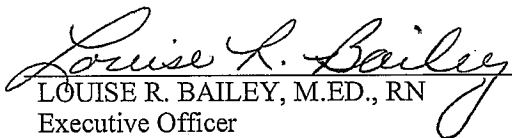
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Registered Nursing issue a decision:

9 1. Revoking or suspending Registered Nurse License Number 306060, issued to
10 Katherine Ann Capdeville, aka Katherine Ann Gaura;

11 2. Ordering Katherine Ann Capdeville, aka Katherine Ann Gaura to pay the Board of
12 Registered Nursing the reasonable costs of the investigation and enforcement of this case,
13 pursuant to Business and Professions Code section 125.3;

14 3. Taking such other and further action as deemed necessary and proper.
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17 DATED: 6/20/11


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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